

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MONICO MONTOYA,

Plaintiff,

v.

No. 22-cv-0810 KG-SCY

THE CITY OF ALBUQUERQUE N.M., *et al*,

Defendants.

ORDER OF DISMISSAL

This matter is before the Court following Plaintiff Monico Montoya's failure to prosecute his *pro se* Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241 (Doc. 1) (Petition). Fuller filed this case while detained at the Metropolitan Detention Center (MDC). The MDC inmate locator website reflects Fuller is no longer in custody, and he has not provided a current address as required by D.N.M. LR-Civ. 83.6. See <https://gtlinterface.berncs.gov/custodylist/Results>. By an Order entered March 3, 2023, the Court directed Fuller to update his address within thirty days or show cause why this case should not be dismissed. See Doc. 5. The Order warned that the failure to timely comply will result in dismissal of this action without further notice.

Fuller did not update his address by the April 3, 2023 deadline, and the Order was also returned as undeliverable. Accordingly, the Court will dismiss the Petition without prejudice under Fed. R. Civ. P. 41(b) "for failure to ... comply with [civil rules and] court orders." *Olsen v. Mapes*, 333 F.3d 1199, 1204 n. 3 (10th Cir. 2003). Fuller's pending Motion to Proceed *In Forma Pauperis* (Doc. 2) will be denied as moot. Finally, to the extent necessary, the Court will also deny a certificate of appealability (COA) under Habeas Rule 11, as the failure to prosecute this case is not reasonably debatable. See *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (A COA must

be denied in each habeas case unless “reasonable jurists” would debate the outcome); *DeAtley v. Williams*, 782 Fed. App’x 736, 737 (10th Cir. 2019) (declining to issue a COA after district court dismissed habeas petition under Rule 41).

IT IS ORDERED that Morgan Fuller’s Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241 (**Doc. 1**) is **DISMISSED without prejudice**; the Motion to Proceed *In Forma Pauperis* (**Doc. 2**) is **DENIED as moot**; a certificate of appealability is **DENIED**; and the Court will enter a separate judgment closing this civil case.


UNITED STATES DISTRICT JUDGE